

and (b) of this section in narrative form.

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV-D) PROGRAM

Subpart A—Tribal IV-D Program: General Provisions

Sec.

- 309.01 What does this part cover?
- 309.05 What definitions apply to this part?
- 309.10 Who is eligible to apply for and receive Federal funding to operate a Tribal IV-D program?

Subpart B—Tribal IV-D Program Application Procedures

- 309.15 What is a Tribal IV-D program application?
- 309.16 What rules apply to start-up funding?
- 309.20 Who submits a Tribal IV-D program application and where?
- 309.35 What are the procedures for review of a Tribal IV-D program application, plan or plan amendment?
- 309.40 What is the basis for disapproval of a Tribal IV-D program application, plan or plan amendment?
- 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?
- 309.50 What are the consequences of disapproval of a Tribal IV-D program application, plan or plan amendment?

Subpart C—Tribal IV-D Plan Requirements

- 309.55 What does this subpart cover?
- 309.60 Who is responsible for administration of the Tribal IV-D program under the Tribal IV-D plan?
- 309.65 What must a Tribe or Tribal organization include in a Tribal IV-D plan in order to demonstrate capacity to operate a Tribal IV-D program?
- 309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.85 What records must a Tribe or Tribal organization agree to maintain in a Tribal IV-D plan?
- 309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.95 What procedures governing the location of custodial and noncustodial parents must a Tribe or Tribal organization include in a Tribal IV-D plan?

- 309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.105 What procedures governing child support guidelines must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?

Subpart D—Tribal IV-D Program Funding

- 309.125 On what basis is Federal funding of Tribal IV-D programs determined?
- 309.130 How will Tribal IV-D programs be funded and what forms are required?
- 309.135 What requirements apply to funding, obligating and liquidating Federal title IV-D grant funds?
- 309.145 What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this part?
- 309.150 What start-up costs are allowable for Tribal IV-D programs carried out under § 309.65(b) of this part?
- 309.155 What uses of Tribal IV-D program funds are not allowable?

Subpart E—Accountability and Monitoring

- 309.160 How will OCSE determine if Tribal IV-D program funds are appropriately expended?
- 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal IV-D program expenditures?

Subpart F—Statistical and Narrative Reporting Requirements

- 309.170 What statistical and narrative reporting requirements apply to Tribal IV-D programs?

AUTHORITY: 42 U.S.C. 655(f), 1302.

SOURCE: 69 FR 16672, Mar. 30, 2004, unless otherwise noted.

Subpart A—Tribal IV-D Program: General Provisions

§ 309.01 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act.

§ 309.05

45 CFR Ch. III (10–1–04 Edition)

Section 455(f) of the Act authorizes direct grants to Indian Tribes and Tribal organizations to operate child support enforcement programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations to be eligible for grants under section 455(f) of the Act. They establish requirements for: Tribal IV-D plan and application content; submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; and other program requirements and procedures.

§ 309.05 What definitions apply to this part?

The following definitions apply to this part:

IV-D services are the services that are authorized or required for the establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents under title IV-D of the Act, this rule, the Tribal IV-D plan and program instructions issued by the Department.

ACF means the Administration for Children and Families, U.S. Department of Health and Human Services.

Act means the Social Security Act, unless otherwise specified.

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services.

Central office means the Office of Child Support Enforcement.

Child support order and *child support obligation* mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court of competent jurisdiction, tribunal or an administrative agency for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

The *Department* means the U.S. Department of Health and Human Services.

Income means any periodic form of payment due to an individual regardless of source, except that a Tribe may expressly decide to exclude per capita, trust, or Individual Indian Money (IIM) payments.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe and *Tribe* mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally-recognized Indian Tribal governments as published in the FEDERAL REGISTER pursuant to 25 U.S.C. 479a-1.

Location means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), and other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

Non-cash support is support provided to a family in the nature of goods and/or services, rather than in cash, but which, nonetheless, has a certain and specific dollar value.

Notice of Disapproval refers to the written notification from the Department that the Tribal IV-D application, IV-D plan, or plan amendment fails to meet the requirements for approval under applicable Federal statutes and regulations.

OCSE refers to the Federal Office of Child Support Enforcement.

Program development plan means a document detailing the specific steps a Tribe or Tribal organization will take to come into compliance with the requirements of § 309.65(a), and the timeframe associated with each step.

Regional office refers to one of the regional offices of the Administration for Children and Families.

Secretary means the Secretary of the Department of Health and Human Services or designee.

TANF means the Temporary Assistance for Needy Families program as found at section 401 *et seq.* of the Social Security Act (42 U.S.C. 601 *et seq.*).

Title IV-D refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

Tribal IV-D agency means the organizational unit in the Tribe or Tribal organization that has the authority for administering or supervising the Tribal IV-D program under section 455(f) of the Act.

Tribal custom means unwritten law having the force and effect of law within a particular Tribe.

Tribal organization means any legally established organization of Indian Tribes which is sanctioned or chartered as a single governing body representing two or more Indian Tribes.

§ 309.10 Who is eligible to apply for and receive Federal funding to operate a Tribal IV-D program?

The following Tribes or Tribal organizations are eligible to apply to receive Federal funding to operate a Tribal IV-D program meeting the requirements of this part:

(a) An Indian Tribe with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization that has been designated by two or more Indian Tribes to operate a Tribal IV-D program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal laws or codes, in the population of the Tribes subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

(c) A Tribe or Tribal organization that can demonstrate to the satisfaction of the Secretary the capacity to operate a child support enforcement program and provide justification for operating a program with less than the minimum number of children may be granted a waiver of paragraph (a) or (b) of this section as appropriate.

(1) A Tribe or Tribal organization's request for waiver of paragraph (a) or (b) of this section must include documentation sufficient to demonstrate that meeting the requirement is not

necessary. Such documentation must state:

(i) That the Tribe or Tribal organization otherwise complies with the requirements established in subpart C of these regulations;

(ii) That the Tribe or Tribal organization has the administrative capacity to support operation of a child support program under the requirements of this part;

(iii) That the Tribal IV-D program will be cost effective; and

(iv) The number of children under the jurisdiction of the Tribe or Tribal organization.

(2) A Tribe or Tribal organization's request for a waiver may be approved if the Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that it can provide the services required under 45 CFR part 309 in a cost effective manner even though the population subject to Tribal jurisdiction includes fewer than 100 children.

Subpart B—Tribal IV-D Program Application Procedures

§ 309.15 What is a Tribal IV-D program application?

(a) *Initial application.* The initial application for funding under § 309.65(a) may be submitted at any time. The initial application must include:

(1) Standard Form (SF) 424, "Application for Federal Assistance;"

(2) SF 424A, "Budget Information—Non-Construction Programs," including the following information:

(i) A quarter-by-quarter estimate of expenditures for the funding period; and

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and if so, an election of a method under paragraph (a)(3) of this section to calculate estimated indirect costs; and

(iii) A narrative justification for each cost category on the form; and either:

(iv) A statement that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required; or

(v) A request for a waiver of the non-Federal share in accordance with § 309.130(e), if appropriate.

§ 309.16

45 CFR Ch. III (10–1–04 Edition)

(3) If the Tribe or Tribal organization requests funding for indirect costs, estimated indirect costs may be submitted either by:

(i) Including documentation of the dollar amount of indirect costs allocable to the IV-D program; or

(ii) Submission of its current indirect cost rate negotiated with the Department of Interior and the estimated amount of indirect costs calculated using the negotiated cost rate.

(4) The Tribal IV-D plan. The initial application must include a comprehensive statement identifying how the Tribe or Tribal organization is meeting the requirements of subpart C of this part and that describes the capacity of the Tribe or Tribal organization to operate a IV-D program which meets the objectives of title IV-D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Additional application requirement for Tribal organizations.* The initial and subsequent annual budget submissions of a Tribal organization must document that each participating Tribe authorizes the Tribal organization to operate a Tribal IV-D program on its behalf.

(c) *Annual budget submission.* Following the initial funding period, the Tribe or Tribal organization operating a IV-D program must submit annually Form SF 424A, including all the necessary accompanying information and documentation described in paragraphs (a)(2) and (a)(3) of this section.

(d) *Plan Amendments.* Plan amendments must be submitted in accordance with the requirements of § 309.35(e).

§ 309.16 What rules apply to start-up funding?

(a) The application for start-up funding under § 309.65(b) must include:

(1) Standard Form (SF) 424, “Application for Federal Assistance”;

(2) SF 424A, “Budget Information—Non-Construction Programs,” including the following information:

(i) A quarter-by-quarter estimate of expenditures for the start-up period;

(ii) Notification of whether the Tribe or Tribal organization is requesting

funds for indirect costs and, if so, an election of a method to calculate estimated indirect costs under paragraph (a)(3) of this section; and

(iii) A narrative justification for each cost category on the form;

(3) If the Tribe or Tribal organization requests funding for indirect costs as part of its application for Federal start-up funds, estimated indirect costs may be submitted either by:

(i) Including documentation of the dollar amount of indirect costs allocable to the IV-D program including the methodology used to arrive at these amounts; or

(ii) Submission of its current indirect cost rate negotiated with the Department of Interior and the amount of estimated indirect costs using that rate.

(iii) The amount of indirect costs must be included within the limit of \$500,000 specified in paragraph (c) of this section.

(4) With respect to each requirement in § 309.65(a) that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement; and

(5) With respect to each requirement in § 309.65(a) that the Tribe or Tribal organization does not currently meet, a program development plan which demonstrates to the satisfaction of the Secretary that the Tribe or Tribal organization has the capacity and will have in place a Tribal IV-D program that will meet the requirements outlined in § 309.65(a), within a reasonable, specific period of time, not to exceed two years. The Secretary must approve the program development plan. Disapproval of a program development plan is not subject to administrative appeal.

(b) The process for approval and disapproval of applications for start-up funding under this section is found in §§ 309.35, 309.40, 309.45, and 309.50. A disapproval of an application for start-up funding is not subject to administrative appeal.

(c) Federal funding for start-up costs is limited to \$500,000, which must be obligated and liquidated within two years after the first day of the quarter after the start-up application was approved. In extraordinary circumstances, the

Secretary will consider a request to extend the period of time during which start-up funding will be available and/or to increase the amount of start-up funding provided. Denial of a request to extend the time during which start-up funding will be available or for an increase in the amount of start-up funding is not subject to administrative appeal.

(1) The Secretary may grant a no-cost extension of time if the Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that the extension will result in satisfaction of each requirement established in § 309.65(a) by the grantee and completion of the program development plan required under § 309.65(b)(2).

(2) The Secretary may grant an increase in the amount of Federal start-up funding provided beyond the limit specified at paragraph (c) of this section and § 309.150 if—

(i) The Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that a specific amount of additional funds for a specific purpose or purposes will result in satisfaction of the requirements specified in § 309.65(a) which the Tribe or Tribal organization otherwise will be unable to meet; and

(ii) The Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that it has satisfied every applicable reporting requirement.

(d) If a Tribe or Tribal organization receives start-up funding based on submission and approval of a Tribal IV-D application which includes a program development plan under § 309.65(b), a progress report that describes accomplishments to date in carrying out the plan must be submitted with the next annual refunding request.

§ 309.20 Who submits a Tribal IV-D program application and where?

(a) The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal IV-D program application.

(b) Applications must be submitted to the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW., Washington, DC 20447, with a copy to the appropriate regional office.

§ 309.35 What are the procedures for review of a Tribal IV-D program application, plan or plan amendment?

(a) The Secretary will promptly review a Tribal IV-D program application, plan or plan amendment to determine whether it conforms to the requirements of the Act and these regulations. Not later than the 90th day following the date on which the Tribal IV-D application, plan or plan amendment is received by the Secretary, action will be taken unless additional information is needed. If additional information is needed from the Tribe or Tribal organization, the Secretary will promptly notify the Tribe or Tribal organization.

(b) The Secretary will take action on the application, plan or plan amendment within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

(c) Determinations as to whether the Tribal IV-D plan, including plan amendments, originally meets or continues to meet the requirements for approval are based on applicable Federal statutes, regulations and instructions applicable to Tribal IV-D programs. Guidance may be furnished to assist in the interpretation of the regulations.

(d) After approval of the original Tribal IV-D program application, all relevant changes required by new Federal statutes, rules, regulations, and Department interpretations are required to be submitted so that the Secretary may determine whether the plan continues to meet Federal requirements and policies.

(e) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal IV-D program, a Tribal IV-D plan amendment must be submitted at the earliest reasonable time for approval under this section. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its IV-D plan, consistent with the requirements of applicable statutes and regulations.

(f) The effective date of a plan or plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan or plan amendment is submitted.

§ 309.40 What is the basis for disapproval of a Tribal IV-D program application, plan or plan amendment?

(a) A IV-D application, plan, or plan amendment will be disapproved if:

(1) The Secretary determines that the application, plan, or plan amendment fails to meet or no longer meets one or more of the requirements set forth in this part or any other applicable Federal regulations, statutes and implementing instructions;

(2) The Secretary determines that required Tribal laws, code, regulations, and procedures are not in effect; and/or

(3) The Secretary determines that the application, plan, or plan amendment is not complete, after the Tribe or Tribal organization has had the opportunity to submit the necessary information.

(b)(1) Except as provided in paragraph (b)(2) of this section and § 309.45(h) of this part, a written Notice of Disapproval of the Tribal IV-D program application, plan, or plan amendment, as applicable, will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of paragraph (a) of this section apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

(2) Where the Secretary believes an approved Tribal IV-D plan should be disapproved, he will notify the Tribe of his intent to disapprove the plan.

(c) If the application, plan or plan amendment is incomplete and fails to provide enough information to make a determination to approve or disapprove, the Secretary will request the necessary information.

§ 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?

(a) Except as specified under paragraphs (g) and (h) of this section, a Tribe or Tribal organization may request reconsideration of the disapproval of a Tribal IV-D application, plan or plan amendment by filing a written Request for Reconsideration to the Secretary within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application, plan or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application, plan or plan amendment conforms to the requirements for approval specified in applicable Federal statutes, regulations and office issuances; and

(3) Whether or not the Tribe or Tribal organization requests a meeting or conference call with the Secretary.

(c) After receiving a Request for Reconsideration that includes a request for a conference call or meeting, OCSE will determine whether to hold a conference call or a meeting with the Tribe or Tribal organization to discuss the reasons for disapproval of the application, plan, or plan amendment as well as the Tribe or Tribal organization's response. The Secretary will notify the Tribe or Tribal organization of the date and time of the conference call or meeting.

(d) A conference call or meeting under § 309.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless both parties agree in writing to another time.

(e) The Secretary will make a written determination affirming, modifying, or reversing disapproval of a Tribal IV-D program application, plan, or plan amendment within 60 days after the conference call or meeting is held, or within 60 days after the request for reconsideration that does not include a request for a meeting. This determination shall be the final decision of the Secretary.

(f) The Secretary's determination that a Tribal IV-D application, new plan or plan amendment is not approvable remains in effect pending the reconsideration under this part.

(g) Disapproval of start-up funding, a request for waiver of the 100-child rule, and a request for waiver of the non-Federal Tribal share is not subject to administrative appeal.

(h) Where the Secretary believes an approved Tribal IV-D plan should be

disapproved, he will notify the Tribe of his intent to disapprove the plan. If the Tribe waives its right to reconsideration under this section, the Tribe may request a pre-decision hearing with 60 days of the date of the Notice of Intent to Disapprove the plan. The hearing will utilize the procedures at 45 CFR part 213.

§ 309.50 What are the consequences of disapproval of a Tribal IV-D program application, plan or plan amendment?

(a) If an application or plan submitted pursuant to § 309.15 is disapproved, the Tribe or Tribal organization will receive no funding under § 309.65(a) or this part until a new application or plan is submitted and approved.

(b) If a IV-D plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application, plan or plan amendment has been disapproved may re-apply at any time.

Subpart C—Tribal IV-D Plan Requirements

§ 309.55 What does this subpart cover?

This subpart defines the Tribal IV-D plan provisions that are required to demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV-D of the Act and these regulations, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

§ 309.60 Who is responsible for administration of the Tribal IV-D program under the Tribal IV-D plan?

(a) Under the Tribal IV-D plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal IV-D plan. That agency shall be referred to as the Tribal IV-D agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal IV-D program. Except where otherwise provided in

this part, the Tribal IV-D agency need not perform all the functions of the Tribal IV-D program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal IV-D program to another Tribe, a State, and/or another agency or entity pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal IV-D plan by such Tribe, State, agency or entity. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal IV-D plan any agreements, contracts, or Tribal resolutions between the Tribal IV-D agency and a Tribe, State, other agency or entity.

§ 309.65 What must a Tribe or Tribal organization include in a Tribal IV-D plan in order to demonstrate capacity to operate a Tribal IV-D program?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal IV-D program meeting the objectives of title IV-D of the Act and these regulations by submission of a Tribal IV-D plan which contains the required elements listed in paragraphs (a)(1) through (14) of this section:

(1) A description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 309.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for IV-D services and promptly providing IV-D services required by law and regulation;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal IV-D program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 309.75;

(5) Safeguarding procedures as specified under § 309.80;

§ 309.70

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 309.90;

(8) Procedures for the location of noncustodial parents as specified under § 309.95;

(9) Procedures for the establishment of paternity as specified under § 309.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 309.105;

(11) Procedures for income withholding as specified under § 309.110;

(12) Procedures for the distribution of child support collections as specified under § 309.115;

(13) Procedures for intergovernmental case processing as specified under § 309.120; and

(14) Tribally-determined performance targets for paternity establishment, support order establishment, amount of current support to be collected, amount of past due support to be collected, and any other performance measures a Tribe or Tribal organization may want to submit.

(b) If a Tribe or Tribal organization currently is unable to satisfy any or all of the requirements specified in paragraph (a) of this section:

(1) It may demonstrate capacity to operate a Tribal IV-D program meeting the objectives of title IV-D of the Act and these regulations by submission of an application for start-up funding as required by § 309.16(a) of this part.

(2) The Secretary may cease start-up funding to a Tribe or Tribal organization if that Tribe or Tribal organization fails to satisfy one or more provisions or milestones described in its program development plan within the timeframe specified in such plan.

§ 309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes and certify that there are at least 100 children under the age of majority in the popu-

45 CFR Ch. III (10–1–04 Edition)

lation subject to the jurisdiction of the Tribe in accordance with § 309.10 of this part and subject to § 309.10(c).

§ 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan the administrative and management provisions contained in this section:

(a) A description of the structure of the IV-D agency and the distribution of responsibilities within the agency.

(b) Evidence that all Federal funds and amounts collected by the Tribal IV-D agency are protected against loss. Tribes and Tribal organizations may comply with this paragraph by submitting documentation that establishes that every person who receives, disburses, handles, or has access to or control over funds collected under the Tribal IV-D program is covered by a bond or insurance sufficient to cover all losses.

(c) Procedures under which notices of support collected, itemized by month of collection, are provided to families receiving services under the Tribal IV-D program at least once a year. In addition, a notice must be provided at any time to either the custodial or noncustodial parent upon request.

(d) A certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Pub. L. 98-502, as amended) and OMB Circular A-133.

(e) If the Tribe or Tribal organization intends to charge an application fee or recover costs in excess of the fee, the Tribal IV-D plan must provide that:

(1) The application fee must be uniformly applied by the Tribe or Tribal organization and must be:

(i) A flat amount not to exceed \$25.00; or

(ii) An amount based on a fee schedule not to exceed \$25.00.

(2) The Tribal IV-D agency may not charge an application fee in an inter-governmental case referred to the Tribal IV-D agency for services under § 309.120.

(3) No application fee may be charged to an individual receiving services under titles IV-A, IV-E foster care maintenance assistance, or XIX (Medicaid) of the Act.

(4) The Tribal IV-D agency must exclude from its quarterly expenditure claims an amount equal to all fees which are collected and costs recovered during the quarter.

§ 309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan safeguarding provisions in accordance with this section:

(a) Procedures under which the use or disclosure of personal information received by or maintained by the Tribal IV-D agency is limited to purposes directly connected with the administration of the Tribal IV-D program, or titles IV-A and XIX with the administration of other programs or purposes prescribed by the Secretary in regulations.

(b) Procedures for safeguards that are applicable to all confidential information handled by the Tribal IV-D agency and that are designed to protect the privacy rights of the parties, including:

(1) Safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify or enforce support;

(2) Prohibitions against the release of information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(3) Prohibitions against the release of information on the whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child; and

(4) Procedures in accordance with any specific safeguarding regulations

applicable to Tribal IV-D programs promulgated by the Secretary.

(c) Procedures under which sanctions must be imposed for the unauthorized use or disclosure of information covered by paragraphs (a) and (b) of this section.

§ 309.85 What records must a Tribe or Tribal organization agree to maintain in a Tribal IV-D plan?

A Tribal IV-D plan must provide that:

(a) The Tribal IV-D agency will maintain records necessary for the proper and efficient operation of the program, including records regarding:

(1) Applications for child support services;

(2) Efforts to locate noncustodial parents;

(3) Actions taken to establish paternity and obtain and enforce support;

(4) Amounts owed, arrearages, amounts and sources of support collections, and the distribution of such collections;

(5) IV-D program expenditures;

(6) Any fees charged and collected, if applicable; and

(7) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.

(b) The Tribal IV-D agency will comply with the retention and access requirements at 45 CFR 74.53, including the requirement that records be retained for at least three years.

§ 309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal IV-D plan?

(a) A Tribe or Tribal organization must include in its Tribal IV-D plan Tribal law, code, regulations, and/or other evidence that provides for:

(1) Establishment of paternity for any child up to and including at least 18 years of age;

(2) Establishment and modification of child support obligations;

(3) Enforcement of child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110; and

(4) Location of custodial and non-custodial parents.

§ 309.95

45 CFR Ch. III (10-1-04 Edition)

(b) In the absence of written laws and regulations, a Tribe or Tribal organization may provide in its plan detailed descriptions of any Tribal custom or common law with the force and effect of law which enables the Tribe or Tribal organization to satisfy the requirements in paragraph (a) of this section.

§ 309.95 What procedures governing the location of custodial and noncustodial parents must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan the provisions governing the location of custodial and noncustodial parents and their assets set forth in this section.

(a) The Tribal IV-D agency must attempt to locate custodial or noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) The Tribal IV-D agency must use all sources of information and records reasonably available to the Tribe or Tribal organization to locate custodial or noncustodial parents and their sources of income and assets.

§ 309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal IV-D plan?

(a) A Tribe or Tribal organization must include in its Tribal IV-D plan the procedures for the establishment of paternity included in this section. The Tribe must include in its Tribal IV-D plan procedures under which the Tribal IV-D agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom in accordance with this section;

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity; and

(3) In a contested paternity case (unless otherwise barred by Tribal law) require the child and all other parties to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(i) Alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or

(ii) Denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(b) The Tribal IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal IV-D agency, it would not be in the best interests of the child to establish paternity.

(c) When genetic testing is used to establish paternity, the Tribal IV-D agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically-acceptable genetic tests which intend to identify the father or exclude the alleged father.

(d) Establishment of paternity under this section has no effect on Tribal enrollment or membership.

§ 309.105 What procedures governing child support guidelines must a Tribe or Tribal organization include in a Tribal IV-D plan?

(a) A Tribal IV-D plan must: (1) Establish one set of child support guidelines by law or action of the tribunal for setting and modifying child support obligation amounts;

(2) Include a copy of child support guidelines governing the establishment and modification of child support obligations;

(3) Indicate whether non-cash payments will be permitted to satisfy support obligations, and if so;

(i) Require that Tribal support orders allowing non-cash payments also state the specific dollar amount of the support obligation; and

(ii) Describe the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order; and

(iii) Provide that non-cash payments will not be permitted to satisfy assigned support obligations;

(4) Indicate that child support guidelines will be reviewed and revised, if appropriate, at least once every four years;

(5) Provide that there shall be a rebuttable presumption, in any proceeding for the award of child support, that the amount of the award that would result from the application of

the guidelines established consistent with this section is the correct amount of child support to be awarded; and

(6) Provide for the application of the guidelines unless there is a written finding or a specific finding on the record of the tribunal that the application of the guidelines would be unjust or inappropriate in a particular case in accordance with criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the needs of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(b) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

§ 309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan copies of Tribal laws providing for income withholding in accordance with this section.

(a) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal IV-D plan, or is being enforced under such plan, so much of his or her income, as defined in § 309.05, must be withheld as is necessary to comply with the order.

(b) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(c) The total amount to be withheld under paragraphs (a) and (b) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)), but may be set at a lower amount.

(d) Income withholding must be carried out in compliance with the proce-

dural due process requirements established by the Tribe or Tribal organization.

(e) The Tribal IV-D agency will promptly refund amounts which have been improperly withheld.

(f) The Tribal IV-D agency will promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(g) If the employer fails to withhold income in accordance with the provision of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.

(h) Income shall not be subject to withholding in any case where:

(1) Either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or

(2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, and is reviewed and entered into the record by the tribunal.

(i) Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a Tribal support order are at least equal to the support payable for one month.

(j) The only basis for contesting a withholding is a mistake of fact, which for purposes of this paragraph, means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(k) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

(l) To initiate income withholding, the Tribal IV-D agency must send the noncustodial parent's employer a notice using the standard Federal income withholding form.

§ 309.115

45 CFR Ch. III (10–1–04 Edition)

(m) The Tribal IV-D agency must allocate withheld amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

(n) The Tribal IV-D agency is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction.

§ 309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must specify in its Tribal IV-D plan procedures for the distribution of child support collections in each Tribal IV-D case, in accordance with this section.

(a) *General Rule:* The Tribal IV-D agency must, in a timely manner:

(1) Apply collections first to satisfy current support obligations, except as provided in paragraph (e) of this section; and

(2) Pay all support collections to the family unless the family is currently receiving or formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe's TANF agency, or the Tribal IV-D agency has received a request for assistance in collecting support on behalf of the family from a State or Tribal IV-D agency.

(b) *Current Receipt of Tribal TANF:* If the family is currently receiving assistance from the Tribal TANF program and has assigned support rights to the Tribe and:

(1) There is no request for assistance in collecting support on behalf of the family from a State or Tribal IV-D agency under § 309.120 of this part, the Tribal IV-D agency may retain collections on behalf of the family, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(2) There is a request for assistance in collecting support on behalf of the family from a State or Tribal IV-D agency under § 9.120 of this part, the Tribal IV-D agency may retain collections, not to exceed the total amount

of Tribal TANF paid to the family. Except as provided in paragraph (f) of this section, the Tribal IV-D agency must send any remaining collections, as appropriate, to the requesting State IV-D agency for distribution under section 457 of the Act and 45 CFR 302.51 or 302.52, or to the requesting Tribal IV-D agency for distribution in accordance with this section.

(c) *Former Receipt of Tribal TANF:* If the family formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe and:

(1) There is no request for assistance in collecting support from a State or Tribal IV-D agency under § 309.120 of this part, the Tribal IV-D agency must pay current support and any arrearages owed to the family to the family and may then retain any excess collections, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(2) There is a request for assistance in collecting support from a State or Tribal IV-D agency under § 309.120 of this part, the Tribal IV-D agency must send all support collected, as appropriate, to the requesting State IV-D agency for distribution under section 457 of the Act or 45 CFR 302.51 or 303.52, or to the requesting Tribal IV-D agency for distribution under this section, except as provided in paragraph (f) of this section.

(d) *Requests for Assistance from State or Tribal IV-D Agency:* If there is no assignment of support rights to the Tribe as a condition of receipt of Tribal TANF and the Tribal IV-D agency has received a request for assistance in collecting support on behalf of the family from a State or another Tribal IV-D agency under § 309.120 of this part, the Tribal IV-D agency must send all support collected to either the State IV-D agency for distribution in accordance with section 457 of the Act and 45 CFR 302.51 and 302.52, or to the Tribal IV-D agency for distribution under this section, as appropriate, except as provided in paragraph (f) of this section.

(e) *Federal Income Tax Refund Offset Collections:* Any collections received

based on Federal income tax refund offset under section 464 of the Act and distributed by the Tribal IV-D agency must be applied to satisfy child support arrearages.

(f) *Option to Contact Requesting Agency for Appropriate Distribution:* Rather than send collections to a State or another Tribal IV-D agency for distribution as required under §309.115 (b)(2), (c)(2) and (d), a Tribal IV-D agency may contact the requesting State IV-D agency to determine appropriate distribution under section 457 of the Act, or the other Tribal IV-D agency to determine appropriate distribution under this section, and distribute collections as directed by the other agency.

§ 309.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must specify in its Tribal IV-D plan:

(a) That the Tribal IV-D agency will extend the full range of services available under its IV-D plan to respond to all requests from, and cooperate with, State and other Tribal IV-D agencies; and

(b) That the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

Subpart D—Tribal IV-D Program Funding

§ 309.125 On what basis is Federal funding of Tribal IV-D programs determined?

Federal funding of Tribal IV-D programs is based on information contained in the Tribal IV-D application. The application must include a proposed budget and a description of the nature and scope of the Tribal IV-D program and must give assurance that the program will be administered in conformity with applicable requirements of title IV-D of the Act, regulations contained in this part, and other official issuances of the Department that specifically state applicability to Tribal IV-D programs.

§ 309.130 How will Tribal IV-D programs be funded and what forms are required?

(a) *General mechanism.* (1) Tribes and Tribal organizations with approved Tribal plans under title IV-D will receive Federal grant funds in an amount equal to the percentage specified in paragraph (c) of this section of the total amount of approved and allowable expenditures under the plan for the administration of the Tribal child support enforcement program.

(2) Tribes and Tribal organizations eligible for grants of less than \$1 million per 12-month funding period will receive a single annual award. Tribes and Tribal organizations eligible for grants of \$1 million or more per 12-month funding period will receive four equal quarterly awards.

(b) *Financial Form Submittal Requirements.* Tribes and Tribal organizations receiving Federal funding under this part are required to submit the following financial forms, and such other forms as the Secretary may designate, to OCSE:

(1) Standard Form (SF) 424, "Application for Federal Assistance," to be submitted with the initial grant application for funding under §309.65(a) and (b) (60 days prior to the start of the funding period);

(2) SF 424A, "Budget Information—Non-Construction Programs," to be submitted annually, no later than August 1 (60 days prior to the start of the funding period) in accordance with §309.15(a)(2) of this part. With each submission, the following information must be included:

(i) A quarter-by-quarter estimate of expenditures for the funding period; and

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and an election of a method to calculate estimated indirect costs; and

(iii) A narrative justification for each cost category on the form; and for funding under §309.65(a) either:

(iv) A statement certifying that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required, or

§ 309.130

45 CFR Ch. III (10–1–04 Edition)

(v) A request for a waiver of the non-Federal share in accordance with paragraph (e) of this section;

(3) SF 269A, “Financial Status Report (Short Form),” to be submitted quarterly within 30 days after the end of each of the first three quarters of the funding period and within 30 days after the end of each of the first three quarters of the liquidation period. The final report for each period is due within 90 days after the end the fourth quarter of both the funding and the liquidation period; and

(4) Form OCSE-34A, “Quarterly Report of Collections” to be submitted within 30 days after the end of the first three quarters and 90 days after the end of the fourth quarter.

(c) *Federal share of program expenditures.* (1) During the period of start-up funding specified in § 309.16, a Tribe or Tribal organization will receive Federal grant funds equal to 100 percent of approved and allowable expenditures made during that period. Federal start-up funds are limited to a total of \$500,000.

(2) During a 3-year period, beginning with the first day of the first quarter of the funding grant specified under § 309.135(a)(2), a Tribe or Tribal organization will receive Federal grant funds equal to 90 percent of the total amount of approved and allowable expenditures made during that period for the administration of the Tribal child support enforcement program.

(3) For all periods following the 3-year period specified in paragraph (c)(2) of this section, a Tribe or Tribal organization will receive Federal grant funds equal to 80 percent of the total amount of approved and allowable expenditures made for the administration of the Tribal child support enforcement program.

(d) *Non-Federal share of program expenditures.* Each Tribe or Tribal organization that operates a child support enforcement program under title IV-D and § 309.65(a), unless the Secretary has granted a waiver pursuant to § 309.130(e), must provide the non-Federal share of funding, equal to:

(1) 10 percent of approved and allowable expenditures during the 3-year period specified in paragraph (c)(2) of this section or;

(2) 20 percent of approved and allowable expenditures during the subsequent periods specified in paragraph (c)(3) of this section.

(3) The non-Federal share of program expenditures must be provided either with cash or with in-kind contributions and must meet the requirements found in 45 CFR 74.23.

(e) *Waiver of non-Federal share of program expenditures.* (1) Under certain circumstances, the Secretary may grant a temporary waiver of part or all of the non-Federal share of expenditures.

(i) If a Tribe or Tribal organization anticipates that it will be temporarily unable to contribute part or all of the non-Federal share of funding under paragraph (d) of this section, it must submit a written request that this requirement be temporarily waived. A request for a waiver of part or all of the non-Federal share must be sent to ACF, included with the submission of SF 424A, no later than 60 days prior to the start of the funding period for which the waiver is being requested, except as provided in paragraph (e)(1)(ii) of this section. An untimely or incomplete request will not be considered.

(ii) If, after the start of the funding period, an emergency situation such as a hurricane or flood occurs such that the grantee would need to request a waiver of the non-Federal costs, it may do so. The request for a waiver must be submitted in accordance with the procedures specified in paragraphs (e)(2), (3) and (4) of this section. Any waiver request other than one submitted with the initial application must be submitted as soon as the adverse effect of the emergency situation giving rise to the request is known to the grantee.

(2) A request for a waiver of part or all of the non-Federal share must include the following:

(i) A statement of the amount of the non-Federal share that the Tribe is requesting be waived;

(ii) A narrative statement describing the circumstances and justification for the waiver request;

(iii) Portions of the Tribal budget for the funding period sufficient to demonstrate that any funding shortfall is not limited to the Tribal IV-D program

and that any uncommitted Tribal reserve funds are insufficient to meet the non-Federal funding requirement;

(iv) Copies of any additional financial documents in support of the request;

(v) A detailed description of the attempts made to secure the necessary funds and in-kind contributions from other sources and the results of those attempts, including copies of all relevant correspondence; and

(vi) Any other documentation or other information that the Secretary may require to make this determination.

(3) The Tribe or Tribal organization must demonstrate to the satisfaction of the Secretary that it temporarily lacks resources to provide the non-Federal share. In its request for a temporary waiver, the Tribe or Tribal organization must be able to demonstrate that it:

(i) Lacks sufficient resources to provide the required non-Federal share of costs;

(ii) Has made reasonable, but unsuccessful, efforts to obtain non-Federal share contributions; and

(iii) Has provided all required information requested by the Secretary.

(4) All statements in support of a waiver request must be supported by evidence including, but not limited to, a description of how the Tribe or Tribal organization's circumstances relate to its capacity to provide child support enforcement services. The following statements will be considered insufficient to merit a waiver under this section without documentary evidence satisfactory to the Secretary:

(i) Funds have been committed to other budget items;

(ii) A high rate of unemployment;

(iii) A generally poor economic condition;

(iv) A lack of or a decline in revenue from gaming, fishing, timber, mineral rights and other similar revenue sources;

(v) A small or declining tax base; and

(vi) Little or no economic development.

(5)(i) If approved, a temporary waiver submitted under either paragraph (e)(1)(i) or (ii) of this section will expire on the last day of the funding period for which it was approved and is sub-

ject to review at any time during the funding period and may be revoked, if changing circumstances warrant.

(ii) Unless the Tribe receives a written approval of its waiver request, the funding requirements stated in paragraph (d) of this section remain in effect.

(iii) If the request for a waiver is denied, the denial is not subject to administrative appeal.

(f) *Increase in approved budget.* (1) A Tribe or Tribal organization may request an increase in the approved amount of its current budget by submitting a revised SF 424A to ACF and explaining why it needs the additional funds. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, to allow the Secretary adequate time to review the estimates and issue a revised grant award, if appropriate.

(2) If the change in Tribal IV-D budget estimate results from a change in the Tribal IV-D plan, the Tribe or Tribal organization must submit a plan amendment in accordance with § 309.35(e) of this part, a revised SF 424 and a revised SF 424A with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan is submitted in accordance with § 309.35(f) of this part. The Secretary must approve the plan amendment before approving any additional funding.

(3) Any approved increase in the Tribal IV-D budget will necessarily result in a proportional increase in the non-Federal share, unless a waiver of the non-Federal share has been granted.

(g) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System on a letter of credit system for payment of advances of Federal funds.

(h) *Grant administration requirements.* The provisions of part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to Tribes and Tribal organizations under this part.

§ 309.135 What requirements apply to funding, obligating and liquidating Federal title IV–D grant funds?

(a) *Funding period.* (1) *Ongoing funding.* Federal title IV–D grant funds will be awarded to Tribes and Tribal organizations for use during a 12-month period equivalent to the Federal fiscal year of October 1 through September 30.

(2) *Initial grant.* A Tribe or Tribal organization may request that its initial IV–D grant be awarded for a funding period of less than one year (but at least six months) or more than one year (but not to exceed 17 months) to enable its program funding cycle to coincide with the funding period specified in paragraph (a)(1) of this section.

(b) *Obligation period.* A Tribe or Tribal organization must obligate its Federal title IV–D grant funds no later than the last day of the funding period for which they were awarded. Any of these funds remaining unobligated after that date must be returned to the Department.

(c) *Liquidation period.* A Tribe or Tribal organization must liquidate the Federal title IV–D grant funds obligated during the obligation period specified in paragraph (b) of this section no later than the last day of the 12-month period immediately following the obligation period. Any of these funds remaining unliquidated after that date must be returned to the Department.

(d) *Funding reductions.* As required under § 309.130(b)(3), a Tribe or Tribal organization will report quarterly on Form SF 269A the amount of Federal title IV–D grant funds that have been obligated and liquidated and the amounts that remain unobligated and unliquidated at the end of each fiscal quarter during the obligation and liquidation periods. The Department will reduce the amount of the Tribe or Tribal organization's Federal title IV–D grant funds for the funding period by any amount reported as remaining unobligated on the report following the last day of the obligation period. The Department will further reduce the amount of the Tribe or Tribal organization's Federal title IV–D grant funds for the funding period by any amount reported as remaining unliquidated on

the report following the last day of the liquidation period.

(e) *Extension requests.* A Tribe or Tribal organization may submit a written request for an extension of the deadline for liquidating Federal title IV–D grant funds. Such a request must be sent to ACF, to the attention of the Federal grants officer named on the most recent grant award. The request must be submitted as soon as it is clear that such an extension will be needed; any request received after the end of the liquidation period will not be considered. The request must include a detailed explanation of the extenuating circumstances or other reasons for the request and must state the date by which the Tribe anticipates all obligated funds will be liquidated. Unless the Tribe receives a written approval of its request, the deadline stated in paragraph (c) of this section remains in effect.

§ 309.145 What costs are allowable for Tribal IV–D programs carried out under § 309.65(a) of this part?

Federal funds are available for costs of operating a Tribal IV–D program under an approved Tribal IV–D application carried out under § 309.65(a) of this part, provided that such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. Allowable activities and costs include:

(a) Administration of the Tribal IV–D program, including but not limited to the following:

(1) Establishment and administration of the Tribal IV–D plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR part 74. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

- (iii) Cooperation with courts and law enforcement officials;
 - (iv) Securing compliance with the requirements of the Tribal IV-D program plan in operations under any agreements;
 - (v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and
 - (vi) Development of cost allocation systems.
- (b) Establishment of paternity, including:
- (1) Establishment of paternity in accordance with Tribal law codes, and/or custom in accordance with § 309.100 of this part, as outlined in the approved Tribal IV-D plan;
 - (2) Reasonable attempts to determine the identity of a child's father, such as:
 - (i) Investigation;
 - (ii) Development of evidence, including the use of genetic testing performed by accredited laboratories; and
 - (iii) Pre-trial discovery;
 - (3) Actions taken by a tribunal to establish paternity pursuant to procedures established by Tribal law, and/or codes or custom in accordance with § 309.100 of this part;
 - (4) Identifying accredited laboratories that perform genetic tests (as appropriate); and
 - (5) Referrals of cases to another Tribal IV-D agency or to a State to establish paternity when appropriate.
- (c) Establishment, modification, and enforcement of support obligations, including:
- (1) Investigation, development of evidence and, when appropriate, court or administrative actions;
 - (2) Determination of the amount of the support obligation (including determination of income and allowable non-cash support under Tribal IV-D guidelines, if appropriate);
 - (3) Enforcement of a support obligation, including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and
 - (4) Investigation and prosecution of fraud related to child and spousal support cases receiving services under the IV-D plan.
- (d) Collection and disbursement of support payments, including:
- (1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;
 - (2) Referral or transfer of cases to another Tribal IV-D agency or to a State IV-D program when appropriate; and
 - (3) Services provided for another Tribal IV-D program or for a State IV-D program.
- (e) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes.
- (f) Activities related to requests to State IV-D programs for enforcement services for the Federal Income Tax Refund Offset.
- (g) Establishing and maintaining case records.
- (h) Automated data processing computer systems for:
- (1) Planning efforts in the identification, evaluation, and selection of a new or replacement automated data processing computer system solution addressing the program requirements defined in a Tribal plan;
 - (2) Operation and maintenance of existing Tribal automated data processing computer systems;
 - (3) Procurement, installation, operation and maintenance of essential office automation capability;
 - (4) Establishment of intergovernmental agreements with States and Tribes for use of an existing automated data processing computer system necessary to support Tribal IV-D program operations; and
 - (5) Other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.
 - (i) Staffing and equipment that are directly related to operating a Tribal IV-D program.
 - (j) The portion of salaries and expenses of a Tribe's chief executive and staff that is directly attributable to managing and operating a Tribal IV-D program.
 - (k) The portion of salaries and expenses of tribunals and staff that is directly related to required Tribal IV-D program activities.

§ 309.150

(l) Service of process.
(m) Training on a short-term basis that is directly related to operating a Tribal IV-D program.

(n) Costs associated with obtaining technical assistance that are directly related to operating a IV-D program, from non-Federal third-party sources, including other Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities.

(o) Any other costs that are determined to be reasonable, necessary, and allocable to the Tribal IV-D program in accordance with the cost principles in OMB Circular A-87. The total amount that may be claimed under the Tribal IV-D grant are allowable direct costs, plus the allocable portion of allowable indirect costs, minus any applicable credits.

(1) All claimed costs must be adequately documented; and

(2) A cost is allocable if the goods or services involved are assignable to the grant according to the relative benefit received. Any cost that is allocable to one Federal award may not be charged to other Federal awards to overcome funding deficiencies, or for any other reason.

§ 309.150 What start-up costs are allowable for Tribal IV-D programs carried out under § 309.65(b) of this part?

Federal funds are available for costs of developing a Tribal IV-D program, provided that such costs are reasonable, necessary, and allocable to the program. Federal funding for Tribal IV-D program development under § 309.65(b) may not exceed a total of \$500,000, unless additional funding is provided pursuant to § 309.16(c). Allowable start-up costs and activities include:

(a) Planning for the initial development and implementation of a Tribal IV-D program;

(b) Developing Tribal IV-D laws, codes, guidelines, systems, and procedures;

(c) Recruiting, hiring, and training Tribal IV-D program staff; and

(d) Any other reasonable, necessary, and allocable costs with a direct cor-

45 CFR Ch. III (10-1-04 Edition)

relation to the initial development of a Tribal IV-D program, consistent with the cost principles in OMB Circular A-87, and approved by the Secretary.

§ 309.155 What uses of Tribal IV-D program funds are not allowable?

Federal IV-D funds may not be used for:

(a) Activities related to administering other programs, including those under the Social Security Act;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees or costs collected, including any fee collected from a State;

(d) Expenditures for jailing of parents in Tribal IV-D cases;

(e) The cost of legal counsel for indigent defendants in Tribal IV-D program actions;

(f) The cost of guardians ad litem in Tribal IV-D cases; and

(g) All other costs that are not reasonable, necessary, and allocable to Tribal IV-D programs, under the cost principles in OMB Circular A-87.

Subpart E—Accountability and Monitoring

§ 309.160 How will OCSE determine if Tribal IV-D program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and 45 CFR part 74. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

§ 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal IV-D program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal IV-D program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable.

Subpart F—Statistical and Narrative Reporting Requirements

§ 309.170 What statistical and narrative reporting requirements apply to Tribal IV-D programs?

(a) Tribes and Tribal organizations operating a Tribal IV-D program must submit to OCSE the *Child Support Enforcement Program: Quarterly Report of Collections* (Form OCSE-34A). The reports for each of the first three quarters of the funding period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each funding period.

(b) Tribes and Tribal organizations must submit the following information and statistics for Tribal IV-D program activity and caseload for each annual funding period:

(1) Total number of cases and, of the total number of cases, the number that are State or Tribal TANF cases and the number that are non-TANF cases;

(2) Total number of out-of-wedlock births in the previous year and total number of paternities established or acknowledged;

(3) Total number of cases and the total number of cases with a support order;

(4) Total amount of current support due and collected;

(5) Total amount of past-due support owed and total collected;

(6) A narrative report on activities, accomplishments, and progress of the program, including success in reaching the performance targets established by the Tribe or Tribal organization;

(7) Total costs claimed;

(8) Total amount of fees and costs recovered; and

(9) Total amount of laboratory paternity establishment costs.

(c) A Tribe or Tribal organization must submit Tribal IV-D program statistical and narrative reports required by paragraph (b) of this section no later than 90 days after the end of each funding period.

PART 310—COMPREHENSIVE TRIBAL CHILD SUPPORT ENFORCEMENT (CSE) PROGRAMS

Subpart A—Tribal CSE Program: General Provisions

Sec.

310.1 What does this part cover?

310.5 What definitions apply to this part?

310.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

Subpart B—Tribal CSE Program Application Procedures

310.15 What is a Tribal CSE program application?

310.20 Who submits a Tribal CSE program application?

310.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

310.30 Where does the Tribe or Tribal organization submit the application?

310.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

310.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

310.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

310.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

Subpart C—Tribal CSE Plan Requirements

310.55 What does this subpart cover?

310.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

310.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

310.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

310.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

310.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

310.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

310.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?